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IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

JANE BRAY, OPERATION RESCUE, *et al.*,
Petitioners,

v.

ALEXANDRIA WOMEN'S HEALTH CLINIC,
NATIONAL ORGANIZATION FOR WOMEN, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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BRIEF FOR THE NATIONAL ABORTION FEDERATION AND PLANNED PARENTHOOD FEDERATION OF AMERICA, INC. AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICI CURIAE*

The National Abortion Federation ("NAF") and Planned Parenthood Federation of America, Inc. ("PPFA") submit this brief in support of respondents.[1] NAF, a not-for-profit professional association, was founded in 1977 and is composed primarily of clinics and physicians' offices providing reproductive health services, including abortion. Currently, NAF members include 260 abortion providers operating in 45 states, the District of

[1] The parties have consented to the filing of this brief. Their letters of consent are being filed with the Clerk of the Court.

Columbia, Puerto Rico and Canada.[2] NAF's primary objective is to unite providers of abortion services into a professional community dedicated to quality care. NAF provides professional standards, guidelines, training and education to its members and serves as a clearinghouse for information and advice to abortion-service professionals and the general public.

PPFA, a not-for-profit corporation organized in 1922, is the leading national voluntary public health organization in the field of family planning. Currently PPFA has 170 affiliates in 49 states operating approximately 900 family planning clinics.[3] Thirty-three PPFA affiliates are also members of NAF. PPFA affiliates offer a wide range of services relating to reproductive health, including abortion. Fifty-nine PPFA clinics offer abortion services as part of their program, and all PPFA affiliates that do not perform abortions themselves offer counseling and referral for such services.[4]

NAF members and PPFA affiliates are the targets of the nationwide campaign of antiabortion violence and intimidation typified by this case. *Amici* thus have a special concern that the Court be fully informed as to the scope and nature of this campaign, because these facts demonstrate how closely this campaign mirrors the campaign of violence and harassment which gave rise to 42 U.S.C. § 1985(3).

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[2] Five of the original plaintiffs in this action are NAF members: the NOVA Women's Medical Center, Planned Parenthood of Metropolitan Washington, D.C., Inc., Prince William Women's Clinic, Hillcrest Women's Surgi-Center and Metropolitan Family Planning Institute.

[3] One respondent is a PPFA affiliate: Planned Parenthood of Metropolitan Washington, D.C., Inc.

[4] An additional 15 PPFA clinics expect to offer abortion services by the end of 1991.

STATEMENT OF FACTS

Amici curiae adopt by reference the Statement of Facts set forth in the Brief for Respondents filed with this Court.

SUMMARY OF ARGUMENT

Over the past decade, our nation has witnessed a campaign operating outside the law with the self-proclaimed purpose of preventing women from exercising their constitutional right of reproductive choice. A factual overview of this campaign shows a nationwide pattern of acts of violence and intimidation targeting the providers of abortions and the women who seek reproductive health services from them. This overview also shows that interstate travel by women seeking services, and by physicians providing services, is an integral part of the abortion service delivery system.

The situation presented today is a virtual mirror image of the situation in our country that prompted the enactment of 42 U.S.C. § 1985(3). Both are characterized by mob violence aimed at preventing a class of citizens from exercising a constitutional right by intimidating those citizens and those who assist them in the exercise of the right. In both, interstate travel is frequently a component of the exercise of the right, and thus also a victim of the intimidation. Therefore, § 1985(3) should be available as a remedy in this case.

ARGUMENT

I. THERE IS A NATIONWIDE CAMPAIGN OF VIOLENCE AND INTIMIDATION AIMED AT PREVENTING WOMEN FROM EXERCISING THEIR RIGHT OF REPRODUCTIVE CHOICE

Between 1977 and 1990, 829 acts of antiabortion violence were reported to NAF: 34 clinics were bombed, 52 clinics were the targets of arson, and 43 more clinics were the targets of attempted bombings or arson. In the first three months of 1991, two more clinics were firebombed and two others had been destroyed or damaged by arson.[5] These activities took place in 30 states as well as the District of Columbia and Canada.

In addition, there were 266 clinic invasions, 269 incidents of vandalism, 64 assaults and batteries, 77 death threats, 2 kidnappings and 22 burglaries.[6] More than half of all acts of extreme violence committed against abortion providers were in the form of arson (39 percent) or bombing (21 percent). Grimes, Forrest, Kirkman & Radford, *An Epidemic of Anti-Abortion Violence in the United States* 8 (1991) ("*Epidemic*").[7] While the

[5] Information concerning these incidents is set forth in NAF's publications: *Incidents of Violence & Disruption Against Abortion Providers* ("*Incidents*") at 1 and *ANTIABORTION VIOLENCE: Incidents of Arsons, Bombings, and Attempts, 1977-1990*, and in letters from NAF to its members, copies of which are being lodged with the Clerk of the Court. NAF regularly collects and publishes these statistics in its capacity as a clearinghouse for information regarding abortion.

[6] *See Incidents* at 1. Many of these tactics are openly advocated by Joseph Scheidler, one of the leaders of the militant antiabortion movement, in his book *Closed: 99 Ways to Stop Abortion* (1985). *See, e.g.*, chapter 37 (Picket the Abortionists' Homes); chapter 53 (Use Private Detectives); chapter 57 (Conduct a Blitz (clinic invasion)); chapter 60 (Get Information from License Plates); chapter 86 (Special Clinic Closing Programs: Project Jericho, Three Month Blitz, and Others).

[7] A copy of *Epidemic* is being lodged with the Clerk of the Court.

total cost of this reign of terror is difficult to determine, it is estimated that antiabortion violence has resulted in $7.6 million in direct damages. *Id.* at 12. This figure does not even include the number of facilities that have been totally destroyed by antiabortion violence. *Id.* The violence has escalated to such a degree across the nation that Congress held hearings on the subject of violence against abortion clinics. *See Abortion Clinic Violence: Oversight Hearings Before the Subcommittee on Civil and Constitutional Rights of the House Comm. on the Judiciary*, 99th Cong., 1st Sess. and 2d Sess. (1985 and 1986) ("*Hearings*").

Since 1987, this campaign has increasingly focused on tactics advocated by Operation Rescue and other militant antiabortion organizations such as the Lambs of Christ: to physically block the doors of clinics to deny access to patients and staff. *Amici* describe *infra* several examples of these blockades to demonstrate that they have "the same aim as the more obviously violent bombings and arson: to shut down the clinics and prevent women from entering them. . . . These tactics are not simple expressions of opinion. They are part of concerted plans to intimidate women and close abortion and reproductive health clinics." *Hearings* at 174 (testimony of Professor Rhonda Copelon, Associate Professor, CUNY Law School at Queens College, New York). Between January 1987 and December 1990, 419 clinic blockades were reported to NAF, resulting in over 26,000 arrests. *Incidents* at 2. The blockades have been accompanied by clinic invasions,[8] destruction of property,[9] and trampling of police lines and barricades.[10] They have thrust a massive burden on

[8] *See Cousins* v. *Terry*, 721 F. Supp. 426, 430-31 (N.D.N.Y. 1989).

[9] *See Town of West Hartford* v. *Operation Rescue*, No. H-89-100, slip op. at 3 (D. Conn. Sept. 20, 1989), *rev'd on other grounds*, 915 F.2d 92 (2d Cir. 1990).

[10] *See NOW* v. *Operation Rescue*, No. 89-2968-LFO, slip op. at 7-8 (D.D.C. Nov. 8, 1989), Memorandum of Findings of Fact and Conclusions of Law.

law enforcement personnel and on the courts.[11] The examples discussed *infra* also demonstrate the nexus between abortion and the constitutional right to travel, and show how the blockades interfere with this nexus.

An increasingly large percentage of women seeking abortions are forced to cross state lines to receive services. Across the country, there is also a growing number of medical professionals who travel interstate to perform abortions. According to a recent survey conducted by The Alan Guttmacher Institute, an average of 26 percent of the women in Arkansas, Idaho, Indiana, Kentucky, Mississippi, South Carolina, South Dakota, Utah, West Virginia and Wyoming traveled to other states for abortion services. Henshaw & Van Vort, *Abortion Services in the United States, 1987 and 1988*, 22 Fam. Plan. Persp. 102, 105 (May/June 1990) ("*Abortion Services 1987-88*"). The survey also showed that the number of doctors and medical facilities in rural areas willing to accept abortion patients dropped 51 percent from 1977 through 1988. *Id.* at 107. Large numbers of out-of-state women also obtain abortions in Delaware, Kansas, North Dakota, New Hampshire, Rhode Island, Vermont and the District of Columbia. *Id.* at 105.

This high volume of interstate travel is caused by several factors. One reason is the severe shortage of physicians willing to perform abortion procedures. In 1990, NAF and the American College of Obstetricians

[11] For example, civil injunctive actions against Operation Rescue have been filed in California, Connecticut, the District of Columbia, Indiana, Maryland, Massachusetts, Nevada, New Hampshire, New York (Albany, Binghamton, Buffalo and New York City), Ohio, Pennsylvania, Virginia and Washington.

[12] The nexus between abortion and travel was recognized in *Doe v. Bolton*, 410 U.S. 179, 200 (1973), which struck down a statute that interfered both with a woman's right to travel interstate to obtain abortion services and the rights of medical providers to deliver such services to non-residents.

and Gynecologists ("ACOG") held a national symposium on the increasing shortage of physicians providing abortion services in the United States. One of the key findings of the symposium was that antiabortion harassment and violence directed toward providers adversely affected physicians' willingness to participate in abortion practice. NAF & ACOG, *Who Will Provide Abortions? Ensuring the Availability of Qualified Practitioners* at 16 (1990) ("*Symposium Findings*").[13] The decrease in the number of physicians providing abortion services is particularly troublesome given that "83 percent of the counties in the United States have no abortion provider."[14] *Id.* at 4.

In South Dakota, for example, there is only one physician, Buck Williams, providing elective abortions for the entire state. Gorney, *Abortion in the Heartland*, Wash. Post, Oct. 2, 1990 (Health), at Z12 ("*Heartland*"). "Women come to Williams's office from five states and sometimes Canada; they come by bus and by car, through rainstorms and Dakota blizzards, some of them driving themselves the six hours it takes to reach Sioux Falls from Rapid City." *Id.* Long distance trips can pose a grave danger to women's health because of the difficulty in rapid diagnosis and treatment of medical complications. *Abortion Services 1987-88* at 105.

Interstate travel is also necessitated by the type of procedure needed by the patient. For example, only one physician in Idaho performs abortions past 12 weeks of

[13] A copy of *Symposium Findings* is being lodged with the Clerk of the Court.

[14] The shortage of providers in turn leads to increased travel by physicians and makes that travel the target of antiabortion violence. *See, e.g.*, Seigel, *Abortion foes change tactics*, Chicago Tribune, Apr. 26, 1991, at 1, col. 1 ("Anti-abortion activists from six states, all of them veterans at blocking abortion clinics, . . . tried to detain a doctor en route to perform abortions by chaining themselves to his car at an Illinois tollway oasis in Lake Forest.").

pregnancy, which causes many women to travel to Portland, Oregon. *Heartland* at Z13. Similarly, because there are few providers of second trimester abortions in Alaska, a woman who requires this procedure in all likelihood must travel out of state to Seattle. *Abortion: MDs who do them and those who won't*, American Medical News, Dec. 8, 1989, at 1, col. 1. At the Hope Clinic for Women, Ltd. in Granite City, Illinois, which performs second trimester abortions, 32 percent of the patients are non-residents from the states of Arkansas, Indiana, Iowa, Kentucky, Michigan, Missouri, Ohio, Tennessee and Wisconsin.

Even if a woman lives in a state where there is a physician who performs abortions and who is willing and able to perform the type of procedure that she needs, she may nevertheless elect to travel out of state to a clinic to maintain the confidentiality which sometimes is compromised in a private physician's office or a hospital. "Clinics develop ways of dealing with the telephone public, and people at large, that guarantee anonymity." *Heartland* at Z15.[15]

More recently, interstate travel and abortion have become inextricably intertwined because of the growing disparity in the abortion laws of each state. States have begun to enact a wide variety of laws regulating abortion. For example, many states have enacted parental consent notification laws.[16] Many minors, for various reasons, have great personal difficulty and anxiety in attempting to comply with the laws. *See Hodgson* v.

[15] To the extent that the physician shortage increases and clinics are closed, maintaining one's privacy becomes more difficult because of the length of time a woman must spend away from work and home obtaining an abortion. *Abortion Services 1987-88* at 105.

[16] Currently 16 states have such laws in effect: Alabama, Arkansas, Indiana, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, North Dakota, Ohio, Rhode Island, South Carolina, West Virginia and Wyoming.

Minnesota, 648 F. Supp. 756, 766-68 (D. Minn. 1986), *rev'd on other grounds*, 853 F.2d 1452 (8th Cir. 1988), *aff'd*, 110 S. Ct. 2926 (1990). Thus, it is increasingly likely that minors will travel interstate to obtain abortions. *Id.* at 767. Other restrictions have similar effects on adults. *See, e.g.*, 18 Pa. Cons. Stat. Ann. § 3211 (banning abortions after 24 weeks).

The destructive, health-threatening effects of the campaign of clinic violence have been felt across the nation. *Amici* have gathered a representative sampling of these episodes to illustrate their disruptive consequences and to show in detail the adverse effects on provision of reproductive health services and the threat to women's health. These examples demonstrate that the facts of this case are neither isolated nor an effort to communicate a political message. Rather, petitioners' conduct is part of a campaign of violence and harassment intended, just as in the post-civil war era, to instill fear, interfere with travel and prevent the exercise of constitutional rights.

A. Southern Tier Women's Services—Vestal, New York

Southern Tier Women's Services, a member of *amicus* NAF, provides routine gynecological services and abortion. Other than Southern Tier, only one physician performs abortions in the entire southwestern region of New York state. On average, Southern Tier performs 50 abortions weekly. Women from within the state may travel 175 miles or more to be treated at Southern Tier. Twenty percent of Southern Tier's patients come from Pennsylvania.

For a three-year period in the late 1980's, Operation Rescue and its founder, Randall Terry, recruited anti-abortion protesters nationwide for "rescue" efforts at Southern Tier. During these blockades, the protesters, sometimes numbering in the hundreds, would: invade the office of Southern Tier; barricade themselves in pro-

cedure rooms; chain themselves together and to furniture or cement blocks; importune patients not to "murder" their babies; obstruct the clinic parking lot and entrances; glue the door locks; deface clinic property with antiabortion slogans; and refuse to leave until forced to do so by the police. *See, e.g., Cousins* v. *Terry*, 721 F. Supp. 426, 430-31 (N.D.N.Y. 1989). During each blockade, Southern Tier would be shut down for several hours and women would be prevented from obtaining medical services. *Id.* at 431-32. Many women who cancelled appointments during blockades failed to reschedule.

Southern Tier eventually sought injunctive relief against Operation Rescue pursuant to 42 U.S.C. § 1985(3) and various state law causes of action, and obtained a permanent injunction pursuant to § 1985(3). *Cousins* v. *Terry*, No. 89-CV-973 (N.D.N.Y. Mar. 27, 1990), *appeal dismissed*, No. 90-7353 (2d Cir. Apr. 23, 1990). Trespass and blockade actions have now ceased at Southern Tier Women's Services and women are able to receive medical treatment without problems.

B. The Atlanta SurgiCenter—Atlanta, Georgia

The Atlanta SurgiCenter is a member of *amicus* NAF. Abortion services, including two-day laminaria procedures, comprise 90 percent of the Center's activity. The Center performs approximately 75 abortions weekly. Last year, eight percent of the patients traveled from North Carolina, South Carolina, Tennessee, Florida, Alabama and Kentucky to obtain abortions at the Center.

During the summer of 1988, the SurgiCenter was blockaded eight times. *See generally* Yancey, *69 Are Arrested While Over 300 Protest Abortion*, Atlanta Journal Constitution, Aug. 7, 1988, at 1A, 15A. Center personnel soon learned that they had to devise extreme and "rescue"-specific security measures. Staff began requiring patients to arrive by 5:30 a.m. in order to get inside before the blockaders' usual 6:30 a.m. assembly.

Names of scheduled patients would appear on a prearranged "check list" and no patient would be permitted more than one or two visitors.[17] Even with these procedures in place, staff operated in the constant fear that imposters would nevertheless get inside and begin harassing or assailing patients and staff.

Late arriving patients could not be guaranteed ingress until the blockade was ended. Often, protesters would charge the police lines and frighten off the women seeking to enter. On more than one occasion, a patient in the second day of a laminaria procedure would have to return to her hotel and be delayed in completing this critical medical treatment.[18] Moreover, those already inside could not rely on immediately obtaining services.

On some days, patients would be able to enter the clinic only with the help of police and escorts. However, this would often be accomplished only after the women's faces were covered with sheets, sweaters or umbrellas to shield their identity. The women then were physically lifted by the escorts over the protesters' prone bodies into a zone of safety. Although over 400 arrests were made during the blockades, each time they occurred the SurgiCenter would be unable to operate for nearly the full day.

C. The Elizabeth Campbell Center—Cincinnati, Ohio

The Center is a full-service reproductive health care clinic operated by Planned Parenthood of Cincinnati, Ohio, an affiliate of *amicus* PPFA. The Center is one of a very few non-profit, public providers of abortions in

[17] Several thousand dollars of the Center's budget went towards hiring extra security guards during the siege. Moreover, plate glass windows which had been destroyed by cement block-throwing protesters had to be replaced with impact-resistant plastic.

[18] If the second day of a laminaria procedure is not done as scheduled, the patient is at increased risk for infection, painful miscarriage and psychological complications. *Cf. Roe* v. *Operation Rescue*, 710 F. Supp. 577, 582 (E.D. Pa. 1989).

the Metropolitan Cincinnati area. It performs approximately 3000 abortions yearly. Nearly 25 percent of the Center's patients are Medicaid-eligible and 12 percent of the clinic's abortion patients are residents of other states such as Illinois, Indiana, Kentucky and West Virginia.

The Center has been the target of antiabortion activity for over a decade. *See 21 abortion foes arrested in protest at Cincy clinic*, The Plain Dealer, June 29, 1986, at 8B, col. 2. Following a 1985 firebombing which destroyed the original clinic, operations were moved to another location where the Center then became the object of frequent hostile and mass picketing.[19] Indeed, the activities of the antiabortion protesters were so abusive that Planned Parenthood, along with tenants of a neighboring apartment building, obtained a state court injunction against the protesters. *Planned Parenthood Ass'n of Cincinnati* v. *Project Jericho*, No. A8602417 (Ct. of Common Pleas, Hamilton Cty., Ohio June 20, 1986). Despite the injunction, defendants repeatedly violated its terms and received numerous contempt citations.[20]

Moreover, the protesters began actual blockades of the Center. On two occasions, they blocked the clinic doors and prevented patients, staff and escorts from entering or leaving the building for several hours.[21] During one

[19] The antiabortion activist who was responsible for this bombing declared himself a "member of the army of God for the unborn," had been arrested in several Cincinnati area abortion protests and admitted to traveling around the country to participate in demonstrations at abortion clinics. *See Man pleads guilty to firebombing clinic*, The Plain Dealer, Sept. 25, 1990, at 4B, col. 2.

[20] After several years of litigation, the Ohio Supreme Court finally upheld findings of contempt against defendants. *Planned Parenthood Ass'n of Cincinnati* v. *Project Jericho*, 52 Ohio St. 3d 56, 556 N.E.2d 157 (1990).

[21] In 1988, three years after the firebombing, the Center moved into its current fortified structure in a mixed residential/commercial

blockade, clinic personnel attempted to shield arriving patients from the protesters by placing them in nearby automobiles. However, the protesters surrounded the cars and rocked them. The terrified patients, now trapped in the cars, tried to cover their faces by putting their coats over their heads and over the car windows.

D. Planned Parenthood of St. Paul, Minnesota

This clinic, affiliated with *amicus* PPFA, began providing abortion-related services in 1977. The clinic performs approximately 2200 to 2500 abortions per year. Five percent of these patients come from outside the state and primarily from Wisconsin. Since opening, the clinic has been the object of arson four times, bombing five times and regular picketing. *See* McEnroe, *48 arrested during anti-abortion rally*, Saint Paul Pioneer Press, June 23, 1990, at 10A, col. 4 ("Pioneer Press"). In this same period, clinic personnel have been constantly threatened with death and kidnapping of their children. Blockade activity began nine years ago.

In a recent episode, approximately 150 protesters from an antiabortion organization known as Pro-Life Action Ministries staged a day-long blockade at the clinic which resulted in the arrest of nearly 50 protesters. *See* Hopfensperger, *Police arrest 50 abortion foes*, Star Tribune, June 23, 1990, at 1A, col. 1 ("Star Tribune"); Pioneer Press at 7A.

Blockade organizers massed their forces in neighboring Minneapolis and then bussed the protesters to the St. Paul clinic. Upon disembarking from the bus, the demonstrators began trespassing on the clinic's private

neighborhood. A considerable proportion of the construction budget was devoted to securing the building against arson, invasions and other acts of terror. Even improved security measures, however, have not been sufficient to prevent the protesters from blockading the Center at its new location.

property and blocked the doors. As the police made arrests, new protesters arrived in waves to take the places of those removed. Notwithstanding police presence, patients were unable to enter the building during the blockade.

The level of aggression heightened when the physician arrived. The protesters assailed him with shouts of "here comes the butcher" and "don't let the killer in." As the police attempted to escort the physician into the building, the crowd surged forward and injured several police officers and a Planned Parenthood staff member. *See* Star Tribune at 8A, col. 1. From 9:00 a.m., when the blockade began, until 4:00 p.m., when the last protesters left the scene, all normal business of the clinic was halted.

E. Vermont Women's Health Center—Burlington, Vermont

The Vermont Women's Health Center is a small, non-profit clinic and member of *amicus* NAF. It provides a broad range of obstetrical and gynecological health services, 20 percent of which are abortion-related. The next closest public provider of abortions is over 50 miles away. In 1990, the Center performed approximately 25 abortions weekly. Twenty to 30 percent of those patients came from outside Vermont, principally from upstate New York, New Hampshire, Massachusetts and Maine.

In October 1989, the Center received an anonymous phone call to "shut down because Operation Rescue [is] coming at noon." When Operation Rescue arrived, three of its members, posing as legitimate patients, gained entry into the clinic. Immediately thereafter, a dump truck arrived, blocked the driveway and unloaded 54 shouting protesters who invaded the building.

They knocked the clinic director to the floor and screamed epithets such as "blood is dripping from your hands" and "Queen Satan, Leader of the baby killers." They prevented the director from reaching a telephone

until they were sure the lines had been cut. They joined together with bicycle locks and then chained themselves to the clinic's furniture and doors.

Police officers were sent to handle this massive and violent confrontation. Two of the officers had to break into the clinic to gain access and were physically assaulted and injured when the protesters attempted to block them from entering. *See* Derby, *54 abortion foes face charges of trespassing*, Burlington Free Press, Oct. 25, 1989, at 3A. Because they were so outnumbered by the protesters, the officers were unable to stop new "rescuers" from entering the building. Moreover, the fire department had to come in to cut open the locks on the protesters one by one.

The Center was effectively shut down for more than 6 hours that day and none of the 13 patients who had come for medical treatment was able to obtain it. Some of the women coming for routine gynecological services have never returned to the Center, citing fear of the protesters as their reason for cancelling appointments.

Since the October 1989 invasion, the Center has been the object of four more blockades. *See* Derby, *Abortion protesters besiege health center*, Burlington Free Press, Feb. 21, 1990, at 1A. Each time, the protesters were successful in halting normal clinic operations for three- to four-hour periods.[22]

These repeated massive and intimidating actions by antiabortion forces have deeply affected the Center's

[22] As a direct result of these protest activities, the Center has had to divert funds intended for other purposes into self-defense initiatives. Thus, extra expenditures have been made for placing new locks on every internal and external entry point. Bars now cover the windows, a fence was erected and a new entrance was created to allow more privacy for entering patients. Further, monies were expended to repair physical damage done to the building by the invaders. *See* Derby, *Clinic steps up security to guard against protesters*, Burlington Free Press, Oct. 27, 1989, at 1A.

staff. A therapist has been called to staff meetings for counselling and, from time to time, self-defense workshops are conducted. The clinic's business manager, a long-term employee, has resigned at the urging of a spouse who feared for her life.

F. Portland Feminist Women's Health Center—Portland, Oregon

This full-service, non-profit reproductive health clinic is a member of *amicus* NAF and one of four public providers of abortion in the Portland, Oregon metropolitan area. The Portland Feminist Women's Health Center ("PFWHC") performs approximately 32 abortions weekly for women of all income ranges, including those who are Medicaid-eligible. Seven to 10 percent of abortion patients travel to the Center from the states of Washington, Idaho, Nevada and California.

Starting in 1984, an antiabortion organization known as Advocates For Life began picketing and blocking the entrances to PFWHC with as many as 160 demonstrators. Frequently, the protesters chased after entering patients, bumping and grabbing them in an effort to block access. They yelled and screamed menacing epithets and tried to press antiabortion literature on patients and personnel who clearly did not want it. In 1985, PFWHC's windows were broken, its telephone and electric power lines were cut and its electric power meters were broken. Further, in 1985, a medical emergency arose which required a patient to be transferred to a hospital. As ambulance attendants attempted to place the patient in their vehicle, the protesters shouted ugly insults at the woman and formed a gauntlet around the attendants which impeded their movement. *See Portland Feminist Women's Health Center* v. *Advocates For Life, Inc.*, No. 86-559-DA, slip op. at 3-5 (D. Or. May 22, 1986).[23] In 1986, PFWHC obtained a federal district

[23] By the end of 1985, half of PFWHC's staff had resigned. Three people, including the Executive Director and the Clinic Administrator, cited acute stress from these violent protests as their reasons for leaving the Center. Moreover, in 1986, the clinic lost more than one third of patients desiring abortions. The clinic also was dropped by its regular insurer and forced into a high-risk pool with a rate increase of 78 percent. Rubenstein, *Abortion protesters continue siege*, The Oregonian, May 28, 1990, at D6.

court preliminary injunctive order on claims of 42 U.S.C. § 1985(3) and state law violations. Order of Preliminary Injunction (D. Or. June 9, 1986).

Defendants repeatedly violated the terms of the order. And, when PFWHC moved to a location less amenable to widescale protests, the demonstrators began to engage in "rescues."[24] From July 1989 to July 1990, PFWHC experienced four blockades by antiabortion forces. Some of these protests have been extremely violent. Rubenstein, *Abortion protesters continue siege*, The Oregonian, May 28, 1990, at D1, D6. During one of the actions, a patient who merely wanted a pregnancy test was prevented from entering the Center. During another, a woman having post-abortion complications was denied ingress. In each blockade, PFWHC was shut down for four to six hours. Those patients who could not go home or elsewhere to wait until they could enter the clinic safely were put into cars and driven around the city for hours.

After a jury trial, PFWHC was awarded damages for the injuries caused by the protests. Moreover, the district court granted plaintiffs' request for a permanent injunction based on defendants' violations of 42 U.S.C. § 1985(3) and various state laws. *Portland Feminist Women's Health Center* v. *Advocates For Life, Inc.*, No. 86-559-FR (D. Or. Mar. 5, 1991) (1991 U.S. Dist. LEXIS 2867).

[24] PFWHC's relocation took five years because landlords throughout the city who feared antiabortion protests refused the Center tenancy. *Id.*

II. THE VIOLENT CAMPAIGN AGAINST WOMEN AND ABORTION PROVIDERS CLOSELY MIRRORS THE VIOLENT CAMPAIGN AGAINST AFRICAN AMERICANS AND THEIR SUPPORTERS WHICH GAVE RISE TO 42 U.S.C. § 1985(3)

A review of the legislative history of § 1985(3) shows that it was enacted in response to the fanaticism of the Ku Klux Klan ("Klan"), whose goal "was the overthrow of the reconstruction policy of Congress and the disenfranchisement of the negro." S. Rep. No. 1, 42d Cong., 1st Sess. VII (1871). The Klan unleashed a campaign of terror intended to "trample into the dust" the newly-acquired constitutional rights of African Americans.[25] The Klan aimed its terrorism not just at African Americans, but also at those who sought to assist them: "Republicans generally, as well as others, such as Northerners who came South with sympathetic views towards the Negro." *United Brotherhood of Carpenters & Joiners* v. *Scott*, 463 U.S. 825, 836 (1983).

Congressional testimony also revealed the Klan was composed of a number of groups which took on different names such as the Invisible Empire, the White Brotherhood and the Constitutional Union Guard. However, the groups were subparts of the Klan, united in the common purpose of extinguishing the hard-fought rights of newly-enfranchised African Americans and their supporters. S. Rep. No. 1, 42d Cong., 1st Sess. VII (1871).

As the discussion in Part I shows, the extremism of the militant antiabortion movement closely parallels the fanaticism of the Klan. Operation Rescue and other groups seek to "trample into the dust" the newly-acquired constitutional right of women to secure abortion, as well as their right to travel interstate to do so. *See* Part III, *infra*. As with the Klan, antiabortion militants bear

[25] Cong. Globe, 42d Cong., 1st Sess. 517 (1871) (remarks of Rep. Shellabarger).

many names,[26] but are united in their goal to extinguish the constitutional rights of women. And like the Klan, these groups aim their assaults not just at women seeking to exercise their rights, but at providers of abortion services who seek to assist them.[27]

The assaults on persons, property and liberties which characterized the terrorism of the Klan are the mission of Operation Rescue today. As the Klan did not recognize the constitutional rights of African Americans, similarly, Operation Rescue does not recognize the constitutional protection afforded to women under *Roe* v. *Wade*. The tactics of groups such as Operation Rescue are designed to discourage or prevent the exercise of constitutional rights through a campaign of violence and intimidation. Crimes of arson, bombing, property destruction and widespread intimidation are being perpetrated in concert and agreement by the militant antiabortion movement, acting with the common purpose to injure women and the abortion providers who enable the women to exercise their right of reproductive choice. The peril to which Operation Rescue subjects women and providers is highly reminiscent of that to which African Americans and their supporters were subjected.

[26] Some of the various militant antiabortion groups are known as Operation Rescue, Project Rescue, the Pro-Life Action League, the Lambs of Christ and the Victim Souls of the Unborn Christ Child.

[27] One of the Klan's tactics was to descend on the homes of individuals at night to threaten and intimidate them because of their Republican sympathies. S. Rep. No. 1, 42d Cong., 1st Sess. VIII (1871). This tactic is mirrored today by the large number of instances where providers and their families are victims of unlawful and harassing residential picketing. *See Frisby* v. *Schultz*, 487 U.S. 474 (1988).

III. THE CAMPAIGN OF ANTIABORTION VIOLENCE AND HARASSMENT INTERFERES WITH THE RIGHT OF INTERSTATE TRAVEL OF WOMEN AND ABORTION PROVIDERS

As discussed in Part I, *supra*, Operation Rescue engages in disruptive tactics which block the ingress and egress to abortion clinics, threaten the health and well-being of women and providers, and deny women the right to travel interstate for abortions. Petitioners, however, claim that their behavior is beyond the scope of the constitutional protection afforded the right of interstate travel.

In *Griffin* v. *Breckenridge*, 403 U.S. 88 (1971), this Court held that in order to constitute a violation of the right to travel, it must be shown that: (1) there was actual or intended interstate travel; (2) the federal right of interstate travel was "*one* of the rights meant to be discriminatorily impaired"; and (3) there was an intent to drive a protected class out of the state *or* to deter members of a protected class from associating with each other. *Id.* at 106 (emphasis added). All these elements are met here.

As is evident from the statistics cited in *Abortion Services 1987-88* and the individual case studies discussed *supra* at 9-17, a great deal of interstate travel is common nationwide in connection with the provision of abortion services. It is equally clear that interstate travel and abortion are permanently and inextricably intertwined due to the decreasing number of providers, the lack of facilities that offer second trimester abortions, and oppressive laws that unduly burden the right of reproductive choice. Therefore, large numbers of women have no choice but to exercise their constitutional right of interstate travel in procuring these medical services.

In addition to the effect that the activities of radical antiabortion groups have had on women traveling interstate for abortion services, antiabortion activists also have directly interfered with the freedom of interstate travel by physicians who provide abortions. As discussed *supra* at 7 n.14, a physician who was traveling along an interstate highway was trapped by a group of militant antiabortion protesters who chained themselves to his car to prevent him from traveling to an abortion clinic in another state. Although the protesters did not physically assault the physician, this incident is otherwise indistinguishable from the conduct which the Court found to violate the right to travel in *Griffin*, 403 U.S. at 90-91, and *United States* v. *Guest*, 383 U.S. 745, 747-48 n.1 (1966).

Petitioners maintain that, because their actions have only an "incidental" effect on women traveling out of state to receive abortion services, the constitutional right to travel is not implicated by their conduct. Brief for Petitioners ("Pet. Br.") at 30. This position is simply unsupported by the facts. Under the standard articulated by the Court in *Griffin*, the requisite intent to violate the right to travel is two-fold: petitioners must intend, as one of their goals, to violate the right to travel, and they must intend to drive out of state those women from other states who cross state lines for abortion services. Both of these intent requirements are met here. By their own admission, petitioners' goal is to stop all abortions. *See* Pet. Br. at 23. Petitioners also state that their actions equally "hinder[] *all* comers, whether from Virginia or from out-of-state." *Id.* at 29 (emphasis in original). *A fortiori*, at least *one* of the intentional purposes of petitioners' actions is to prevent women from traveling into the state to the targeted clinic for abortion services.

To be sure, petitioners' main goal is to interfere with a woman's right to privacy, which includes the decision whether to bear children. *Roe* v. *Wade*, 410 U.S. 113, 153-54 (1973). However, as Professor Copelon noted

in her statement in the Oversight Hearings on abortion clinic violence:

> Many women do travel out of State to obtain abortions, and the avowed purpose of the harassment of the clinics is to stop women from completing their journey or discourage them from even beginning it. This specific intent to interfere with travel is clear in these cases and is articulated by those who undertake the harassment of the clinics.

Hearings at 169.

Likewise, petitioners intend to drive women seeking abortions out of the state. As James X. Dempsey, Assistant Counsel to the Committee, stated at the hearings on clinic violence:

> Because a woman leaves North Carolina, she travels to Norfolk, VA, in order to receive family planning advice or abortion services. She gets to the door of the building and she is told ["]don't enter this building["] by a private person. She turns around, she goes back to North Carolina.
>
> Now, what difference does it make whether she is stopped 5 feet from the door or whether she is stopped on I-95 when she is travelling up there? Wasn't the purpose of the interference to prohibit her making the trip, to turn her around and send her back where she came from?

Id. at 163.

The answer to Mr. Dempsey's question cannot be other than "yes." The purpose of a blockade not only is to impede movement between an automobile and the door of the clinic; it is to discourage women from traveling at all because of the harassment and pandemonium that greet them at the clinic door.[28] While stopping abortion

[28] This Court has previously recognized that the right to travel is implicated by private action which has the effect of discouraging travel by a protected class. *Heart of Atlanta Motel, Inc.* v. *United States*, 379 U.S. 241, 253 (1964); *Katzenbach* v. *McClung*, 379 U.S. 294, 300 (1964).

may be Operation Rescue's ultimate goal, it is clear that the primary means to achieve that goal is to stop the large numbers of women who are forced to cross state lines to exercise the right of reproductive choice, as well as the providers who assist them in exercising that right. Under these facts, a constitutional right to travel violation under *Griffin* is more than satisfied.

CONCLUSION

For the foregoing reasons, this Court should affirm the decision below of the United States Court of Appeals for the Fourth Circuit.

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